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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES S. MEYER, JR.,

Plaintiff and Appellant,

v.

PNC BANK, N.A., et al.,

Defendants and Respondents.

G056774

(Super. Ct. No. 30-2018-00990188)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gregory H. Lewis, Judge. Affirmed. Request for judicial notice granted in part.

Laura Kohut Hoopis for Plaintiff and Appellant.

Reed Smith, Mathew M. Wrenshall, Bryan D. Trader and Perry A.

Napolitano for Defendants and Respondents PNC Bank, N.A. and The PNC Financial Services Group, Inc.

Gibson, Dunn & Crutcher, Kevin S. Rosen and Matthew S. Kahn for Defendant and Respondent Dechert LLP.

Plaintiff, a California resident, appeals the trial court's grant of a motion to stay this action pursuant to the doctrine of forum non conveniens. The court agreed with the moving defendants, PNC Bank, N.A. (PNC Bank), The PNC Financial Services Group, Inc. (PNC Financial Services), and Dechert LLP (Dechert), the balance of public and private interests tips in favor of plaintiff's claims being tried in a Pennsylvania court. Among the factors contributing to the court's conclusion was the strong interest Pennsylvania has in the litigation given that plaintiff's claims effectively challenge the actions of trustees confirmed by a Pennsylvania court to administer a set of Pennsylvania testamentary trusts. We affirm the order granting the stay, as we conclude the trial court did not abuse its discretion in finding California to be an inconvenient forum.

FACTS

Plaintiff is among the beneficiaries of a set of trusts created by a will of his deceased cousin. The probate of the will, which occurred in Pennsylvania, resulted in distribution of the estate assets to the trusts and the trustees specified in the will—PNC Bank and Thomas F. Munno (collectively, the trustees). After years of purported disagreements with, and alleged harassment by, the trustees, plaintiff sued the trustees and related business entities in this California action. At the time plaintiff filed suit, the trusts' securities assets exceeded \$15 million.

As alleged in the complaint, plaintiff is physically disabled and a dependent beneficiary. He is unable to work and the distributions he receives from the trusts are his sole financial support, helping him to pay for health insurance, uncovered medical expenses and living expenses. He receives treatment from a team of specialists located in Orange County, with whom he often requires urgent appointments. In addition to taking prescription medications, plaintiff regularly undergoes a variety of testing and medical procedures.

The trustees are aware of plaintiff's physical and psychological conditions, and they have access to his doctors, specialists, and medical records. Plaintiff allegedly

must obtain approval from trustee Munno for “doctors, medical procedures and expenses, dentists, dental procedures and expenses, health insurance, and living expenses”

Though there is some history of the trustees providing plaintiff with money from the trusts to support his living expenses and medical insurance and care costs, they allegedly have been inconsistent and arbitrary in doing so.

Examples of the wrongful behavior alleged in the complaint include: verbally bullying plaintiff to the point he feels physically ill and experiences severe emotional distress; arbitrarily refusing to provide trust money to pay for plaintiff’s living expenses and health insurance costs; cancelling plaintiff’s health insurance with no notice, and thereafter paying some large uninsured medical expenses using trust money; threatening that the trustees’ legal expenses in defending their actions would deplete the trusts if plaintiff continued to “stand[] up” to the trustees; and, coercing plaintiff to renounce his interest in the trust, and fraudulently misrepresenting his interest therein, in an application for Medi-Cal and Supplemental Security Income.

Grounded in this alleged wrongful behavior, the complaint sets forth seven causes of action: (1) financial abuse (Welf. & Inst. Code, § 15610.30); (2) breach of fiduciary duty, and aiding and abetting the breach; (3) intentional infliction of emotional distress; (4) personal injury; (5) violation of the Unruh Civil Rights Act (Civ. Code, § 51 et seq.); (6) unfair competition against PNC Bank, and PNC Financial Services; and (7) unfair competition against Dechert.

In response to the complaint, PNC Bank, PNC Financial Services, and Dechert (collectively, the moving defendants) filed motions to dismiss or stay the case on

the ground of California being an inconvenient forum.¹ In addition to a traditional forum non conveniens analysis, their moving papers contended a special inconvenient forum principle applied. They argued the trial court's assertion of jurisdiction would "[u]nduly [i]nterfere" with the continuing "[m]andatory" and "exclusive" jurisdiction over the trusts and their administration had by the Pennsylvania court which probated the will.

Plaintiff opposed the motion, arguing the Pennsylvania court did not have mandatory or exclusive jurisdiction over the claims alleged in the complaint, and asserting the movants did not meet their burden of demonstrating California is an inconvenient forum.

After plaintiff filed his opposition, but before the trial court heard the motion to dismiss, the trustees petitioned for an accounting concerning the trusts in the Pennsylvania court.² They explained the reasons for their request as follows: "The account is being filed due to the passage of time, to provide the interested parties with information concerning the administration of the [t]rust[s], including the distributions made, and to request the discharge and release of the current trustees, PNC Bank, N.A., and Thomas F. Munno, for their administration during the accounting period."

The trial court ultimately declined to dismiss the case, but granted the requested stay. Citing *Schuster v. Superior Court* (1929) 98 Cal.App. 619, 625, it first

¹ Munno, a New York resident, filed a motion to dismiss on the same ground, along with a motion to quash the service of summons and complaint due to lack of personal jurisdiction. We take judicial notice of those documents filed in the trial court for procedural background purposes only because they are not included in the appellate record. (Evid. Code, §§ 452, subd. (d), 459.) The trial court never had the opportunity to consider and rule on Munno's motions because of the stay it granted to the moving defendants which gave rise to this appeal.

² Plaintiff filed a motion requesting we take judicial notice of certain documents filed in the Pennsylvania court, including the trustees' petition for an accounting, as well as supposed portions of PNC Financial Services statements concerning the trust. We take judicial notice of the former (Evid. Code, §§ 452, subd. (d), 459), but not of the latter because they are not relevant to the issue before us.

noted what it described as “a well-established principle of law[,] that a trustee appointed by a foreign court is amenable only to that court.” It explained the purpose behind the principle was to aid the rightful administration of a trust, which would be hindered if other jurisdictions were allowed to interfere with, or direct the execution of, it. The court then appeared to conclude the Pennsylvania court would have jurisdiction over plaintiff’s claims, and to find the other beneficiaries of the trusts are indispensable parties to plaintiff’s action.

DISCUSSION

Plaintiff contends the trial court erred in staying his action because (1) the Pennsylvania court does not have exclusive and mandatory jurisdiction over his claims, and (2) the court abused its discretion in finding California to otherwise be an inconvenient forum. We conclude the trial court did not err.

“‘Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. [Citation.]’ [Citation.] ‘In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a “suitable” place for trial.’” (*Investors Equity Life Holding Co. v. Schmidt* (2011) 195 Cal.App.4th 1519, 1528 (*Investors Equity*)), citing *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751 (*Stangvik*).) “‘An alternative forum is suitable if it has jurisdiction and the action in that forum will not be barred by the statute of limitations. . . .’ [Citations.] The ‘defendant, as the moving party, bears the burden of proof’ to show the proposed alternative forum satisfies these requirements.” (195 Cal.App.4th at p. 1529.)

If the court concludes the alternative forum is suitable, “the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the

ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation.”

(*Stangvik, supra*, 54 Cal.3d at p. 751.)

In balancing these factors, a trial court must keep in mind “the plaintiff’s choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant.” (*Stangvik, supra*, 54 Cal.3d at p. 754.)

“The ruling on a forum non conveniens motion is generally reviewed for abuse of discretion with ‘substantial deference . . . accorded [to the trial court’s] determination in this regard. [Citations.]’ [Citation.] But the ‘threshold determination whether the alternate forum is a suitable place for trial’ involves ‘a nondiscretionary determination’ [citation] that is reviewed de novo [citation].” (*Investors Equity, supra*, 195 Cal.App.4th at p. 1528.)

Plaintiff first challenges the validity of a jurisdictional argument made below by the moving defendants in the context of their forum non conveniens motion. They argued the Pennsylvania court has exclusive, mandatory jurisdiction. Rather than defend the argument on appeal, defendants assert they never made it in the first instance.

We need not address the merits of the issue because the trial court did not expressly or impliedly conclude it lacked jurisdiction. If it had, the court would have dismissed the case outright without reaching the merits of the moving defendants’ motion. But it did not do that. Instead, the court explained the forum non conveniens analysis and factors, discussed the relevant case-specific facts, and exercised its discretion to stay the case after finding “Pennsylvania would be the appropriate forum.” And although it mentioned jurisdiction in its analysis, it did so in the context of

explaining why the alternate forum urged by the moving defendants—the Pennsylvania court—was suitable.

Turning to the first part of the traditional forum non conveniens analysis, we find the moving defendants adequately demonstrated the Pennsylvania court would have jurisdiction over plaintiff's claims and they will not be barred by the statute of limitations. Plaintiff does not dispute the Pennsylvania court would have subject matter jurisdiction over his claims and personal jurisdiction over the parties. At base, the claims arise out of the trustee's actions in administering the Pennsylvania trusts. By statute, the Pennsylvania court has jurisdiction over the trust property, administration of the trusts and the fiduciaries of the trusts. (See 20 Pa.C.S. § 711.) And it has continuing personal jurisdiction over the trustees, as well as the other beneficiaries of the trusts. As for the statutes of limitations, the moving defendants explained the limitations periods for similar claims under Pennsylvania law are primarily the same or longer than under California law.

Next, although California would typically be presumptively convenient due to plaintiff's residence, the trial court did not abuse its discretion in finding the balance of public and private interests tips in the moving defendants' favor under the circumstances.

The moving "[d]efendant[s'] residence is [among the] factor[s] to be considered in the balance of convenience." (*Stangvik, supra*, 54 Cal.3d at p. 755.) With PNC Bank and PNC Financial Services being headquartered in Pennsylvania, the Pennsylvania court "is presumptively a convenient forum." (*Ibid.*; accord *Morris v. AGFA Corp.* (2006) 144 Cal.App.4th 1452, 1465.)

The other private interest factors strengthen the presumption in favor of a Pennsylvania forum. With the exception of plaintiff, the beneficiaries of the trusts are outside the jurisdiction of California courts. In contrast, they are all subject to the Pennsylvania court's continuing jurisdiction. Additionally, because the alleged improper acts of PNC Bank and PNC Financial Services occurred in Pennsylvania, and because the

PNC officers and advisors who administer the trusts and supervise all discretionary decisions have their offices in Pennsylvania, many witnesses are located there.

Logically, the same is true regarding relevant documents. So, from a time and money standpoint, litigating in Pennsylvania will be more convenient and less costly for the moving defendants.

Though plaintiff may need to travel to Pennsylvania to testify should his claims go to trial there, he did not offer evidence suggesting a Pennsylvania venue would be highly inconvenient. And we see no reason why it would be. Plaintiff already had legal representation in Pennsylvania given the objections he filed to the trustees' accounting action pending in the Pennsylvania court. And his California counsel can presumably appear *pro hac vice* in Pennsylvania. Also, it is likely he would be able to remain in California during the discovery and pretrial phases of his case, making the need for his physical presence in Pennsylvania minimal.

The balance of public interest factors similarly tips in the moving defendants' favor. The trusts are Pennsylvania trusts, established by the will of a deceased Pennsylvania resident, and the trustees administer the trusts from Pennsylvania. Further, although plaintiff's claims are creatively pled, at their core they challenge the trustees' administration of the trusts—i.e., their decision to provide or not provide plaintiff with trust monies. To the extent the trustees owe a fiduciary duty to plaintiff, a duty which plaintiff alleges they breached, the duty arises solely out of a trustee/beneficiary relationship. Pennsylvania, therefore, has a strong interest in the litigation. And having plaintiff's claims resolved there will avoid potentially inconsistent outcomes. On the other hand, leaving this case in California would add a dispute in which the local community has little concern to the already congested calendars of our local courts. Further, it could result in a judgment which conflicts with any determination made by the Pennsylvania court in the trustees' accounting action.

For these reasons, we conclude the trial court did not abuse its forum non conveniens discretion in declining to exercise jurisdiction over plaintiff's claims based on its finding the claims may be more appropriately and justly tried in Pennsylvania. And because the court found plaintiff is a California resident, it was proper to stay the case, rather than dismiss it. (See *Century Indemnity Co. v. Bank of America* (1997) 58 Cal.App.4th 408, 411-412.)

DISPOSITION

The order is affirmed. In the interests of justice, the parties shall bear their own costs on appeal.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

GOETHALS, J.